IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

WP(C).No. 11363 of 2006(C)

OS.1489/2004 of PRL.M.C.,ERNAKULAM
ST.247/2004 of J.M.F.C. - III, KOCHI
(& ST 248/2004)
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PETITIONER:

JOSE VARGHESE, S/O.VARGHESE, PROPRIETOR, OF NICE AGENCIES, VEEKSHANAM ROAD, ERNAKULAM, COCHIN-18, RESIDING AT KANJOOPARAMBIL HOUSE, CHUTTUPADUKARA, EDAPPALLY VILLAGE, ERNAKULAM.

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)
SRI.P.I.GEORGEKUTTY

RESPONDENTS:
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1. P.G.JOSHI, ROYAL ASSOCIATES, ADAM BYPASS COMPLEX, OPP. LITTLE FLOWER HOSPITAL, ANGAMALY, RESIDING AT PUTHENANGADY HOUSE, DESOM P.O, PURAYAR ALUVA.

2. SUNIL VARGHESE, ROYAL ASSOCIATES, ADAM BYPASS COMPLEX, OPP.LITTLE FLOWER HOSPITAL, ANGAMALY, RESIDING AT PUTHUSSERY HOUSE, NEAR VINCENTIAL HOUSE, MOOKKANNUR P.O., ANGAMALY.

BY ADV. SRI.K.V.SABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 **TRUE COPY OF THE COMPLAINT MADE TO THE CIRCLE INSPECTOR, CENTRAL POLICE STATION BY THE PETITIONER DTD. 20.8.04.**

EXT.P2 **TRUE COPY OF THE COMPLAINT MADE TO THE CIRCLE INSPECTOR, KALAMASSERY POLICE STATION BY THE PETITIONER DTD.20.8.04.**

EXT.P3 **TRUE COPY OF THE PLAINT IN O.S.1489/04 BEFORE THE MUNSIFF COURT, ERNAKULAM DTD.29.9.94.**

EXT.P4 **TRUE COPY OF THE WRITTEN STATEMENT IN OS 1489/04 FILED BY THE RESPONDENTS DTD.15.12.04.**

EXT.P5 **TRUE COPY OF THE ORDER IN O.S.1489/04 PASSED BY THE PRELIMINARY MUNSIFF, ERNAKULAM DTD.1.6.05.**

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 11363 OF 2006

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Dated this the 2nd day of July, 2007.

J U D G M E N T

This writ petition is filed seeking to quash the order of the learned Principal Munsiff, Ernakulam in O.S.1489/04. The copy of the plaint is produced as Ext.P3. The relief claimed in the suit is to the effect that the cheque leaves bearing 597646 and 597647 from the plaintiff's account maintained with the Cochin Stock Exchange Branch of the Syndicate Bank are unsupported by any consideration and that the defendants are not holders in due course of the said cheques and for a consequential mandatory injunction.

2. It is true that the relief is couched in a negative form. The positive direction is that the defendants are not entitled to any amount mentioned in those cheques. So the real relief is regarding the question whether the plaintiff is liable to pay any amount to the defendants under the cheques which are in dispute in this case. It is for a declaration to that effect the suit is filed.

3. The plaintiff has valued the suit under Section 25(d) (ii) at the rate of Rs.1,000/- and paid Court fee of Rs.40. Under

Section 25(d) where the subject matter of the suit is capable of valuation fee has to be computed on the market value of the property and when the subject matter is incapable of valuation fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees one thousand which ever is higher. So, in a case filed under Section 25(d) the principle to be looked into is whether the subject matter of the suit is capable of being valued.

4. Here, the subject matter of the suit is with respect to the issuance of two cheques and its consideration. The cheques are for definite amounts. Whether the cheque is supported by consideration or not are all matters that has to be decided in the case. So, when there is a clear valuation for the cheques in dispute, it has to be held that the subject matter of the suit is capable of being valued and therefore the Court fee that has to be paid must be under Section 25(d)(i) of the Court Fees Act. Though, the Munsiff has not found under which provision the Court fee is to be paid, at least he had entered into a finding that the Court fee paid is not sufficient. After hearing both sides, I clarify and confirm that the Court fee has to be paid under Section 25(d)(i) of the Court Fees Act. The plaintiff is directed to amend

the plaint on the valuation portion and accordingly pay the Court Fee for which the Court below will give him sufficient time.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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